

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Amendment of the Commission's Rules)	RM - 10960
Regarding Modification of FM and AM)	
Authorizations)	

COMMENTS OF AMERICAN MEDIA SERVICES, LLC

American Media Services, LLC ("AMS"), through counsel, hereby comments on the Petition for Rulemaking (the "Petition") filed by First Broadcasting Investment Partners, LLC ("First Broadcasting") on March 5, 2004, in the above-referenced proceeding.

AMS generally supports First Broadcasting's concept that the FCC's rules and procedures governing proposed changes in a broadcast station's community of license require streamlining and rethinking in light of the current state of broadcasting in America. As First Broadcasting points out, the FCC's system should be brought up to date to comport with the realities of contemporary broadcasting thus ensuring the Communications Act's goal of "fair, efficient and equitable distribution of radio services."¹

First Broadcasting is correct that many allotment practices that were originally implemented after nuanced evaluation of the public interest involving broadcasting at

¹ *Petition* at 17 (citing 47 U.S.C. § 307(b)).

the time they were adopted have today become anachronisms and may violate the intent of their adoption. First Broadcasting is also correct when it notes that communities that should not qualify for first local service today seem to enjoy an unchallenged right to remain a community of license despite enormous demographic, economic, cultural and political changes over the course of decades.

While it is true that the Commission must protect broadcast service to small communities that may be too distant from larger media markets from the vagaries of purely market-driven service decisions, it errs when it attempts to maintain such service by routinely denying requests to move a community's sole radio station to another community. This occurs even when a community's sole station teeters on the brink of failure due to demographic, economic, cultural and political changes in the community.

AMS believes that the Commission should issue a notice of proposed rule making ("NPRM") that addresses these concerns in light of the media realities of today. In support thereof, AMS proposes that the Commission incorporate the following six points when it issues an NPRM in response to First Broadcasting's Petition.

(1) When an FM licensee seeks to move a community's only station to another community of license, the licensee should be able to make arrangements for replacement service. Consideration of such replacement service would be made simultaneously with consideration of the proposed change of community in an omnibus proceeding. Hence, the licensee of an AM station or a non-commercial educational FM station ("NCE FM"), which already places a principal community contour over the community subject to the proposed loss of its only current station, could request to have the AM or NCE FM station's community of license changed to the community proposed

to lose its only current station – provided that no changes are proposed to the technical facilities of the AM or NCE FM.

AMS believes that, under such a rubric, if an AM or NCE FM station were to propose a concurrent change of community of license to a community subject to a proposed loss of its only current station, then the strong presumption prohibiting loss of a community's only service would not apply. This is only logical insofar as the community would still receive service licensed to that community – but it would be provided by another station. Currently, such a proposed change to an AM or NCE FM community of license can only occur by filing a construction permit application for a major modification of licensed facilities. Such applications may only be filed during infrequently opened application filing windows.

Such omnibus consideration of relocation proposals is also logical given the patterns of listening today. Listeners tend to switch to AM, FM commercial and NCE FM stations interchangeably. Indeed, in some markets at certain times of the day, an NCE FM may be the highest or one of the highest rated stations.² Moreover, many receivers today rely on digital tuning mechanisms that make no distinction among AM or FM stations with favorites preset and available at the touch of a button. There is no reason to limit service to one type of aural service when any can provide the community with local service that meets the public interest in such localism. Indeed, the proposal and adoption of this rubric would ensure that the community would still be served, while

² For instance, NPR's Morning Edition is the top rated morning news program in many radio markets.

at the same time removing an anachronistic roadblock to efficient, fair and equitable distribution of radio services.

(2) The FCC should require the submission of engineering data accompanying petitions to change the table of allotments in electronic form that can be processed by the Commission's Consolidated Database System (CDBS). The current use of manual review and entry of engineering data contained in FM Table of Allotments petitions is contrary to efficient licensing. Typographical errors may – and have – effectively blocked others from available spectrum until someone discovers the error. Additionally, the near-instantaneous engineering check that accompanies such CDBS-filed applications as the Form 301, would similarly eliminate the spectrum block that occurs – sometimes for months – while a manually filed and evaluated allotment petition is reviewed.

Such spectrum block, created by continued human intervention in the review of routine, basic engineering – whether caused by typing mistakes or by long processing queues, effectively hinders other potential spectrum users who may find no place to put their proposed service if, and until, an allotment is manually cleared. With CDBS processing, both problems can be eliminated through effective automation – and both should be eliminated to maximize efficiency.

(3) The Commission should also make more spectrum available more quickly to potential users by both increasing the frequency (and therefore the reliability) of public information regarding allotment rule making proceedings, and by requiring the use of alternative dispute resolution (“ADR”) mechanisms when proceedings remain unresolved for excessively long time periods.

Here, AMS proposes two things:

(A) The Commission should publish quarterly lists of unresolved rule making dockets. The more information that is available, the more efficiently other potential users of spectrum can evaluate their options.

(B) The Commission should require parties to a contested allotment proceeding to submit to binding arbitration if the proceeding remains pending for more than two years after the deadline for filing reply comments has passed. Such arbitration proceedings could be commenced by any party to the proceeding willing to pay the full cost of such arbitration. Such a requirement would help clear backlogs. With backlogs cleared, other potential users will have a better opportunity to evaluate the spectrum available for new services. Without such a rule, the resultant backlog means that valuable spectrum can be tied up – and remain unused – for many years before parties either settle or the FCC can rule.

To protect the parties' due process rights under a regime in which such mandatory arbitration would replace action by the Audio Division, the parties may still appeal to the full Commission or to a court of competent jurisdiction.

Overall, the mandatory use of ADRs, as proposed here, is in keeping with the FCC's policy. See *Use of Alternative Dispute Resolution Procedures in Commission Proceedings*, 6 FCC Rcd 5669 (1991) (stating that the Commission encourages the use of ADR in proceedings between parties).

(4) AMS concurs with First Broadcasting's assertions that "the FCC should cease emphasizing 'continuity of service' over all other public interest factors when

considering”³ whether a station may be relocated. However, AMS proposes a different methodology to implement this goal.

AMS specifically proposes that the Commission adopt three quantitative and qualitative factors that can be easily and objectively determined. First, the interference-free “loss” area resulting from the commencement of service to the new community should be “well served” with five or more interference-free aural services. Second, the interference-free contour of the facility serving the new community should serve a population at least 50% greater⁴ than the interference-free contour of the station’s existing licensed facility. Finally, AMS agrees with First Broadcasting that this two-step analysis should only apply when the proposed relocation represents a first local aural service for the new community of license.

The adoption of such procedures and rules will allow more people to have access to a greater diversity of broadcasting choices, while balancing this concern against the public interest in maintaining service to smaller communities.

(5) AMS also believes that the fair distribution of spectrum requires that the Commission establish a presumption of “first-in, first out” processing for allotment petitions. Assignment and transfer applications are currently processed in this manner. And while rule making proceedings may contain a legislative component that the ministerial act of application processing does not, in reality, the allotment process more resembles application processing than true legislative activity. For this reason, the Commission should adopt a presumption that the first petition for rulemaking received

³ *Petition* at 17.

⁴ As determined by U.S. Census data.

will be the first petition for rulemaking processed unless out-of-queue processing is justified in a finding by Audio Division officials.

Such a processing policy will maintain the Commission's agenda-setting prerogatives for its legislation-like actions in allotment proceeding when needed, while encouraging fairer and more efficient consideration of more routine, ministerial allotment proposals.

(6) Finally, AMS proposes that the FCC update the FM allotment "city grade" coverage contour requirement so that it more accurately reflects the reality of both community geography and demography.

The current rules require that any new allotment be calculated using a circular contour with a proposed transmitter site at its center. The contour's radius is calculated using so-called "flat earth" propagation prediction, and the entire community must lie within the hypothetical contour. Alternatively, a petitioner may show that the proposed facility at the site provides suitable coverage using the F[50,50] chart in 47 C.F.R. §73.333 and the associated coverage prediction methodology if the proposed site is actually available for the proposed facility.⁵

However, in some cases, community boundaries are not created purely to incorporate populations of citizens within a jurisdiction. A community may annex a stretch of highway extending miles out of town so that local police can enforce the speed limits. Or a community may annex a lake, park or state forest in order to

⁵ See *Woodstock and Broadway, VA*, 3 FCC Rcd 6398.

participate in sales tax revenue from concessions sold there. In each case the area is within the geographic bounds of the community but the US Census would report no associated population – nor would any population ever be reported for such uninhabitable areas.

AMS believes no public interest is met in requiring the city grade contour to cover wholly unpopulated areas that can never be populated. Instead, the public interest will be served by granting allotments where the hypothetical coverage area fails to include such areas when an applicant demonstrates that the excluded area is wholly unpopulated. Such a policy would allow applicants to maximize service to actual people, rather than be forced to develop contour coverage wholly based on geography. Clearly if a radio station broadcasts to a forest, and no one hears it, it is not meeting the public interest that, as noted, lies in “fair, efficient and equitable distribution of radio services.” Any requirement that a station put its best signal over an area without listeners does not meet this statutory requirement. Thus, the Commission should propose and adopt the contour provisions described herein.

CONCLUSION

The Commission must make better use of available spectrum by bringing service to more listeners and giving listeners in communities both large and small more choices. The Commission can help achieve this goal by streamlining and rethinking the rules described in First Broadcasting's Petition and issuing an NPRM that incorporates the

changes proposed in these comments.

Respectfully submitted,

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changes proposed in these comments.

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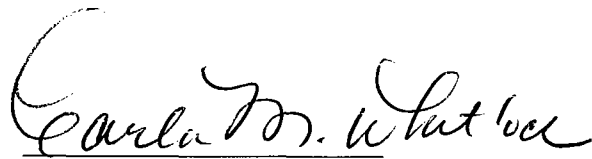
May 24, 2004

CERTIFICATE OF SERVICE

I, Carla M. Whitlock, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C. do hereby certify that a true copy of Comments of American Media Services, LLC was sent on this 24th day of May 2004, via first class U.S. mail, postage prepaid to the following:

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